

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 327

April 5, 1968

### AMORTIZATION OF ADJUSTED BASIS OF DESCRIBED POLLUTION CONTROL EQUIPMENT

#### Syllabus:

Provisions are applicable to out-of-state equipment; on-site inspection of equipment for certification purposes is not mandatory but may be made by the Department of Public Health; extensions of time may be granted in order to make election; one election may cover several pieces of the described equipment; certification remains a requirement under Sections 5(b) and 5(d) of Stats. 1967, ch. 1413, but application for certification is sufficient if filed before expiration of statute of limitations for the stated year.

Sections 24372 and 24372.5 of the Revenue and Taxation Code provide for a deduction for amortization of the adjusted basis of air and water pollution control devices, machinery, or equipment.

A taxpayer which has acquired such equipment at a site outside the State of California is entitled to the deduction provided for, subject to the conditions contained in the sections. Several states, including New York, New Jersey, Massachusetts, North Carolina, Ohio, and Rhode Island, have somewhat similar statutes. Most such states have expressly limited application to local facilities. The lack of limitation on geographic coverage in California's statutes, the fact that other California deduction provisions similarly non-specific on coverage are applicable to property situated outside the state, and the fact that other states' statutes have expressly provided the limitation when desired, in our judgment, justify the conclusion that Sections 24372 and 24372.5 are applicable to property situated outside of California.

The statutes do not specify the certification procedure to be followed. Regulation 17226 explains the provisions of Section 17226 and likewise is applicable to Section 24372, since the latter is the Bank and Corporation Tax Law section essentially identical to Section 17226. This regulation, like the statute, is not specific in describing the procedure to be followed for certification, but its wording impliedly grants to the Department of Public Health the power to choose the procedure which will best meet the demands of the particular case. An actual inspection of out-of-state facilities is not required, but may be demanded by the Department of Public Health as a condition to certification.

The provisions of Reg. 17226(b)(2), applicable under the analysis above,

expressly give to the Franchise Tax Board discretion to allow alternative means and time limitations for making the election. Therefore, it is concluded that an extension of time may be granted for good cause shown. The length of the extension granted, if any, will of course, depend upon the facts of the individual case.

Whether one election is sufficient to cover several pieces of property is not expressly provided for by statute or regulation. However, Reg. 17226(b)(3) requires that any election statement must clearly identify each piece of property for which an amortization deduction is claimed. Further, the certification request forms require an adequate description of the property sought to be certified. These factors justify the conclusion that one election may cover several pieces of equipment so long as the above description requirements are met.

Section 4 of Stats. 1967, ch. 1413, added Section 24372.5 to the Revenue and Taxation Code. Section 5(b) of the above statutes provides that property of the type described in Section 24372.5, acquired or completed prior to August 25, 1967, may receive the deduction provided in 24372.5 under certain conditions. Election and certification are not among these conditions.

Section 3 of Stats. 1967, ch. 1413, amended Section 24372 of the Revenue and Taxation Code to include water pollution control devices. Section 5(d) then provides that water pollution control devices completed or acquired prior to August 25, 1967, may receive the deduction provided in Section 24372 under certain conditions. As in Section 5(b) above, election and certification are not expressly included in these conditions.

The relationship between Section 5(b) of Stats. 1967, ch. 1413, and Section 24372.5 indicates that the legislature intended to allow a form of beneficial retroactive application of Section 24372.5 including its protective certification provision. The same inference arises from the relationship of Section 5(d) and Section 24372.

Though certification is required in order to obtain the deduction granted in Sections 5(b) and 5(d) of Stats. 1967, ch. 1413, no deadline for the application for certification is established. Therefore, the deduction must be granted for the appropriate year (stated in Sections 5(b) and 5(d)) so long as the statute of limitations permits.